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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,771	01/22/2004	Mehryar Khalili Garakani	2705-318	7533
20575	7590	05/31/2005	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 1030 SW MORRISON STREET PORTLAND, OR 97205			ABELSON, RONALD B	
			ART UNIT	PAPER NUMBER
			2666	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

OK

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,771	<b>Applicant(s)</b> GARAKANI ET AL.	
	<b>Examiner</b> Ronald Abelson	<b>Art Unit</b> 2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17, 18 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 15, 16, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/2/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

***Specification***

1. The abstract of the disclosure is objected to because pg. 2 line 19 "nationhood" should be changed to "neighborhood".

Correction is required. See MPEP § 608.01(b).

***Claim Objections***

1. Claim 1 objected to because of the following informalities:  
In line 6, "payout" should be changed to "play-out".

Claim 2 objected to because of the following informalities:  
In line 7, "payout" should be changed to "play-out".

Claim 13 objected to because of the following informalities: In line 7, "payout" should be changed to "play-out".

Claim 14 objected to because of the following informalities: In line 8, "payout" should be changed to "play-out".

Claim 21 objected to because of the following informalities: In line 7, "payout" should be changed to "play-out".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1-4, 21, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Helm (US 20050047396).

Regarding claims 1, 2, and 21, Helm teaches detecting the previous length of the play-out buffer in the previous audio mode; adding a dilation factor to said previous length to obtain a new length, and setting said play-out buffer to said new length (fig. 7 box 705, 707, pg. 3: [0025], congestion bit may be set to many differing congestion values, jitter buffer set to any appropriate size). Note, in order to set the buffer to any appropriate size, the current buffer size must be known in order to calculate the amount of memory to be added/subtracted to the buffer in order to set the buffer to the large buffer size. The

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dilution factor is the difference between the current buffer size and the large buffer size.

Regarding claims 3, 4, and 22, the length of the play-out buffer in audio mode is set adaptively (fig. 7, [0025], destination receives the first VoIP packet in the call stream). Note, the size of the buffer may be reset every time a new call stream is encountered.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1, 2, 7, 8, 11-14, and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Lazarus (US 20030206563).

Regarding claims 1, 2, 13, 14, 21, Lazarus teaches a method of operating a gateway (fig. 1 box 120B) when a first client (fig. 1 box 105) places a call to a second client (fig. 1 box 110) in audio mode (fig. 2 box 215, optimize for voice communications, col. 3 [0025]), causing second client to generate an answer tone (fig. 1 box 110, col. 3 [0025], tone is detected), and said gateway detecting said answer tone causing said gateway to switch to Voice Band Data (VBD) mode (fig. 2 box 245, col. 3 [0025]).

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Lazarus teaches detecting the previous length of the play-out buffer in the previous audio mode (pg. 3 [0024], voice activity, short jitter buffer) and adding a dilation factor to said previous length / short jitter buffer to obtain a new length (pg. 2 [0024], longer jitter buffer). The examiner maintains that the system must detect the length of the previous jitter buffer in the audio mode. If this were not the case, the system would not know how many memory units to add to change the buffer size from the short jitter buffer to the longer jitter buffer. The dilation factor of Lazarus is the difference between the short jitter buffer and the longer jitter buffer. Note, the examiner maintains that both the sizes of the short jitter buffer and longer jitter buffer are constant. Furthermore, both the dilation factor in the application and the one of Lazarus are constants.

Lazarus teaches switching said gateway from audio mode to VBD mode with said play-out buffer set to new length (fig. 2 box 245, pg. 2 [0024] desirable longer jitter buffer).

Regarding claims 7 and 8, switch from audio mode to VBD mode occurs when a first client places a call to a second client and said second client generates an answer tone (fig. 2 boxes 240, 245).

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Regarding claims 11 and 12, said gateway detects said answer tone (fig. 1 box 135, fig. 2 box 240, pg. 3 [0025] and therefore initiates switch from audio mode to VBD mode (fig. 2 box 245).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 5, 6, 17, 18, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazarus as applied to claims 1, 1, 13, 14, and 21 respectively, and further in view of Chan (US 6,826,177).

Lazarus is silent on audio / loss concealment techniques are used to fill any gaps caused by the change in length of the play-out buffer.

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Chan teaches loss concealment to fill produce transitions when the network loses a packet (col. 9 lines 59 - col. 10 line 4).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of Lazarus by incorporating the loss concealment algorithm of Chan in the playout buffer of Lazarus. This modification can be performed in software. This would improve the system by producing transitions less distracting than pure silence (Chan: col. 9 lines 59 - col. 10 line 4).

6. Claims 5, 6, 9, 10, 17, 18, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helm as applied to claims 1, 1, 3, 4, 13, 14, and 21 respectively, and further in view of Chan (US 6,826,177).

Helm is silent on audio / loss concealment techniques are used to fill any gaps caused by the change in length of the play-out buffer.

Chan teaches loss concealment to fill produce transitions when the network loses a packet (col. 9 lines 59 - col. 10 line 4).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of Helm by incorporating



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the loss concealment algorithm of Chan in the playout buffer of Lazarus. This modification can be performed in software. This would improve the system by producing transitions less distracting than pure silence (Chan: col. 9 lines 59 - col. 10 line 4).

### ***Allowable Subject Matter***

7. Claims 15, 16, 19, 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter.

Regarding claims 15 and 16, in the rejection to claims 13 and 14, the play-out buffer in the audio mode is set to be a constant. Therefore, it is not set adaptively.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Abelson whose telephone number is (571) 272-3165. The examiner can normally be reached on M-F.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ronald Abelson  
Examiner  
Art Unit 2666

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